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6 AUTOMOTIVE CORPORATION

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9 **UNITED STATES DISTRICT COURT**
10
11 **NORTHERN DISTRICT OF CALIFORNIA**

12 IN RE: DMCA SECTION 512(H)
13 SUBPOENA TO GITHUB, INC.

14 MISC. ACTION NO: 3:23-MC-80164-LJC

15 **NEXTEER AUTOMOTIVE
16 CORPORATION'S REQUEST TO THE
17 CLERK FOR ISSUANCE OF A SUBPOENA
18 TO GITHUB, INC. PURSUANT TO 17 U.S.C. §
19 512(H) TO IDENTIFY ALLEGED
20 INFRINGER(S)**

1 Nexteer Automotive Corporation ("Nexteer"), through its undersigned counsel of record, hereby
2 requests that the Clerk of this Court issue a subpoena to GitHub, Inc. ("GitHub") to identify an alleged
3 infringer or infringers, pursuant to the Digital Millennium Copyright Act ("DCMA"), 17 U.S.C. §
4 512(h) (the "DMCA Subpoena"). The proposed DMCA subpoena is attached hereto as Exhibit A.

5 The DMCA Subpoena is directed to service provider GitHub. GitHub operates a website to
6 which the infringing party or parties posted various excerpts of Nexteer's source code, which postings
7 infringe copyrights held by or assigned to Nexteer in those materials (the "Infringing Content"). (See
8 Declaration of Pete Kiousis, ¶4).

9 Nexteer has satisfied the requirements for issuance of a subpoena pursuant to 17 U.S.C. § 512(h),
10 because:

- 11 1. Nexteer has submitted a copy of the DMCA notification required by 17 U.S.C. §
12 512(c)(3)(A) as Exhibit 1 to the Pete Kiousis Declaration, filed concurrently herewith;
- 13 2. Nexteer has submitted the proposed DMCA Subpoena concurrently herewith; and
- 14 3. Nexteer has submitted a sworn declaration confirming that the purpose for which the
15 DMCA subpoena is sought is to obtain the identity of the alleged infringer or infringers,
16 and that such information will only be used for the purpose of protecting Nexteer's rights
17 under Title 17 U.S.C. § 512(h)(2).

18 Accordingly, in support of its request for a DMCA Subpoena, Nexteer submits and attaches:

- 19 • A copy of the DMCA notifications described in 17 U.S.C. § 512(c)(3)(A) (see Pete
20 Kiousis Decl., Ex. 1);
- 21 • A proposed DMCA Subpoena directed to service provider GitHub (Ex. A hereto); and
- 22 • A sworn declaration that the purpose for which the DMCA Subpoena is sought is proper
23 under the DMCA. (See Pete Kiousis Decl., ¶5.)

24 Because Nexteer has complied with the statutory requirements, Nexteer respectfully requests that
25 the Clerk expeditiously issue and sign the proposed DMCA Subpoena pursuant to 17 U.S.C. §512(h)(4)
26 and return it to undersigned counsel for service on the subpoena recipient.

1 DATE: FEBRUARY 28, 2024

FOLEY & LARDNER LLP
DANIYAL M. HABIB

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4 By: /s/ Daniyal M. Habib

5 DANIYAL M. HABIB

6 Attorneys for Petitioner NEXTEER
AUTOMOTIVE CORPORATION

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